

October 1, 2014

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Martian J. Jirtian, President Caps Auto Wrecking Corp. 1069 Western Avenue Lynn, MA 01905	Paul P. Mattuchio, Registered Agent Mattuchio Metals, LLC 14 Ross Lane, Middleton MA 01949
Martin J. Jirtian, Registered Agent Caps Auto Wrecking Corp. 1069R Western Avenue Lynn, MA 01905	Mattuchio Metals, LLC 366 Second Street, Everett MA 02149
Martin J. Jirtian, Director Caps Auto Wrecking Corp. 350 Lynnfield Street Lynn, MA 01905	Paul P. Mattuchio, President & Registered Agent Paul Mattuchio, Inc. 17 Jones Road, Middleton MA 01949
Martin J. Jirtian, President Scrap Metals Corporation 1069R Western Avenue Lynn, MA 01905	Paul P. Mattuchio, Director Paul Mattuchio Inc. 366 Second Street, Everett MA 02149
Martin J. Jirtian, Registered Agent Scrap Metals Corporation 350 Lynnfield Street Lynn, MA 01905	Stephen A. Mandracchia, President Mandracchia Trading Co., Inc. 442 Proctor Avenue, Revere MA 02151
David Addario, Director Scrap Metals Corporation 1069R Western Avenue, Lynn MA 01905	Stephen A. Mandracchia, Registered Agent Mandracchia Trading Co., Inc. 369 Broadway Suite 2, Everett MA 02149

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., part 135 (the “Notice”) to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is two-fold. First, Paul Mattuchio, Martin Jirtian, Stephen Mandracchia, Mattuchio Metals, Paul Mattuchio Inc., doing business as Mattuchio Scrap Metal, Mandracchia Trading Co., Inc, Caps Auto Wrecking Corp. and Scrap Metals Corporation (hereinafter “the Operators”) are discharging stormwater directly associated with the automobile salvage and combined scrap metal recycling facility located at 1069 Western Avenue, Lynn MA (hereinafter the “Facility²”), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second the Operators³, have failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit⁴ (“MSGP”) adopted by EPA for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

BACKGROUND

The Saugus River (Segment ID MA93-44) converges with Pines River which thereafter flows into Lynn Harbor/Broad Sound. For its entire length, the Saugus River is categorized as a Category 5 Waterbody, indicating that it is impaired or threatened for one or more uses and requires a TMDL.⁵ Under the Massachusetts Surface Water Quality law, the Saugus River is a Class SB Waterbody “designated as a habitat for fish, other aquatic life and wildlife, including

¹ CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England’s environment.

² The term “Facility” will also include address 1069R Western Avenue, Lynn MA.

³ CLF hereby puts Paul Mattuchio, Martin Jirtian, Stephen Mandracchia, Mattuchio Metals, Paul Mattuchio Inc., doing business as Mattuchio Scrap Metal, Mandracchia Trading Co., Inc, Caps Auto Wrecking Corp. and Scrap Metals Corporation on notice, and also includes their agents and affiliates that they are included in this action and that if CLF subsequently indentifies additional persons as also being responsible for the violations set forth in this notice letter, CLF intends to include those persons in this action.

⁴ ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) [hereinafter MSGP or “permit”], *available at* http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf (last visited February 13, 2012).

⁵ Massachusetts Year 2012 Integrated List of Waters, *available at* <http://www.mass.gov/dep/water/resources/tmdls.htm> (last visited September 22, 2014).

for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation” and “shall have consistently good aesthetic value.”⁶ The Saugus River does not meet these standards and the Environmental Protection Agency (“EPA”) has designated Saugus River as impaired pursuant to Section 303(d) of the Act for failure to meet minimum water quality standards for a number of pollutants.⁷ These pollutants include pathogens, oil and grease, flow alterations and temperature.⁸

The Pines River (Segment ID MA93-15) converges with the Saugus River and thereafter flows into Lynn Harbor. The Pines River is considered a Category 5 Waterbody, indicating that it is impaired or threatened for one or more uses and requires a TMDL.⁹ Under the Massachusetts Surface Water Quality law, the Pines River is a Class SB Waterbody “designated as a habitat for fish, other aquatic life and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation” and “shall have consistently good aesthetic value.”¹⁰ The Pines River does not meet these standards and the Environmental Protection Agency (“EPA”) has designated Pines River as impaired pursuant to Section 303(d) of the Act for failure to meet minimum water quality standards for a pollutant.¹¹ Pines River is impaired due to pathogens.¹²

The inner portion of Lynn Harbor (Segment ID MA93-52) and the outer portion of Lynn Harbor (Segment ID MA93-53), (hereinafter the “Lynn Harbors”) are both categorized as Category 5 Waterbodies, indicating that they are impaired or threatened for one or more uses and require a TMDL.¹³ The Environmental Protection Agency (“EPA”) has designated the both segments of Lynn Harbor as impaired pursuant to Section 303(d) of the Act for failure to meet minimum water quality standards for a pollutant.¹⁴ The Lynn Harbors are impaired for pathogens.^{15 16}

⁶ See Massachusetts Surface Water Quality Standards, 314 MASS. CODE REGS. 4.05:4(b).

⁷ See 33 U.S.C. § 1313(d).

⁸ http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=MA93-44&p_list_id=MA93-44&p_cycle=2012 (last visited September 22, 2014).

⁹ Massachusetts Year 2012 Integrated List of Waters, *available at* <http://www.mass.gov/dep/water/resources/tmdls.htm> (last visited September 22, 2014).

¹⁰ See Massachusetts Surface Water Quality Standards, 314 MASS. CODE REGS. 4.05:4(b).

¹¹ See 33 U.S.C. § 1313(d).

¹² http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA93-15&p_list_id=MA93-15&p_cycle=2012; (last visited September 22, 2014).

¹³ Massachusetts Year 2010 Integrated List of Waters, *available at* <http://www.mass.gov/dep/water/resources/tmdls.htm> (last visited September 22, 2014).

¹⁴ See 33 U.S.C. § 1313(d).

¹⁵ http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=MA93-52&p_cycle=2012&p_state=MA&p_report_type= (last visited September 22, 2014).

¹⁶ http://ofmpub.epa.gov/tmdl_waters10/attains_waterbody.control?p_au_id=MA93-53&p_cycle=2012&p_state=MA&p_report_type= (last visited September 22, 2014).

Stormwater is a significant contributor to these impairments. Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.¹⁷ Industrial activities, such as material handling and storage, processing, reclaiming, and wholesale distribution of used automobile parts and scrap and waste materials or other operations that occur at industrial facilities, may be exposed to stormwater.¹⁸ Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹⁹

The Operators are required to apply for coverage under a Clean Water Act discharge permit such as the MSGP in order to discharge lawfully. Since at least 2007, the Operators have been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within 90 days after the initial issuance of the MSGP.²⁰ On September 29, 2008, after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2008 permit by January 5, 2009.²¹

The Operators have failed to obtain coverage under the MSGP or any other valid authorization, at any time. Therefore, the Operators are conducting business in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

The Operators are the persons, as defined by 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. The Operators are registered with the Secretary of the Commonwealth as having a principal office at 1069 Western Avenue Lynn MA and 1069R Western Avenue Lynn MA²² ²³ and/or currently advertise as the operators of the Facility via the company website²⁴. The Operators, and their agents, have operational control over the day-to-day industrial activities at the Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the CWA.

¹⁷ See 40 C.F.R. § 122.26(b)(13).

¹⁸ See 40 C.F.R. § 122.26(b)(14).

¹⁹ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

²⁰ EPA’s Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995, reissued in 2000, and again in 2008. See 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); and 73 Fed. Reg. 56,572 (Sept. 29, 2008). See MSGP part 1.1 and 1.3.1.

²¹ See MSGP Table 1-2.

²² [http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042059636&SEARCH_T
YPE=1](http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042059636&SEARCH_TYPE=1) (last visited September 22, 2014).

²³ [http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=001099475&SEARCH_T
YPE=1](http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=001099475&SEARCH_TYPE=1) (last visited September 22, 2014).

²⁴ <http://www.mandracchia.net/page1/index.html> (last visited September 22, 2014).

LOCATION OF THE ALLEGED VIOLATIONS

The violations alleged in this Notice have occurred and continue to occur at the automobile salvage yard and combined scrap metal recycling Facility located at 1069 and 1069R Western Avenue, Lynn MA.

SCRAP METAL RECYCLING ACTIVITIES ALLEGED TO BE VIOLATIONS AT THE FACILITY

The Operators have, and continue to, engage in “industrial activities,” and their operations fall under SIC Code 5093, within the meaning of 40 C.F.R. § 122.26(b)(14)(vi).²⁵ Because the Facility has a SIC Code of 5093 and stormwater discharges associated with industrial activity, the Operators are required to apply for, obtain coverage under, and comply with the requirements of a National Pollutant Discharge Elimination System (“NPDES”) permit such as the MSGP. The Operators have failed to take any of these required steps.

The scrap metal operation of the Operators includes, but is not limited to: the purchase, collection, processing and storage of scrap metal outdoors and the operation and storage of industrial equipment. Upon information and belief, the Facility’s scrap piles contain, but are not limited to: industrial aluminum waste, refrigerators, vehicle gas tanks, barrels, aluminum ladders, automotive oil pans and engines, grocery carts, tire rims, pallets, and other materials that are contaminated with industrial pollutants. Vehicles drive on and off the Facility to deliver scrap metal.

Scrap materials, refuse piles, and polluted parking and material handling areas at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the scrap material, refuse piles, and polluted parking and material handling areas, picking up oil, grease, metals, solvents, nutrients, pathogens, dissolved solids, trash, and other pollutants associated with the Facility’s industrial activity. The stormwater associated with industrial activity then flows by the operation of gravity via site grading, sloped surfaces, ditches, subsurface hydrological connections, and other collections and conveyances into waters of the United States.²⁶

AUTO SALVAGE ACTIVITIES ALLEGED TO BE VIOLATIONS AT THE FACILITY

²⁵ See MSGP, Appendix D: Activities Covered, at D-4. Scrap recycling and waste recycling facilities identified by the SIC Code 5093 are subject to the requirements of the MSGP for stormwater discharges.

²⁶ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

The Operators have, and continue to, engage in “industrial activities,” and their operations fall under SIC Code 5015, within the meaning of 40 C.F.R. § 122.26(b)(14)(vi).²⁷ Because the Facility has a SIC Code of 5015 and stormwater discharges associated with industrial activity, the Operators are required to apply for, obtain coverage, and comply with the requirements of a National Pollutant Discharge Elimination System (“NPDES”) permit such as the MSGP. The Operators have failed to take any of these required steps.

Activities at the Facility include, but are not limited to: vehicle dismantling and processing; used parts storage; outdoor vehicle and equipment storage; vehicle and equipment maintenance; vehicle, equipment, and parts washing; and liquid storage. These activities are associated with a wide variety of pollutants, including but not limited to oil and grease; ethylene glycol; heavy metals; mercury; sulfuric acid; iron; galvanized metals; aluminum; petroleum hydrocarbons; suspended solids; arsenic; organics; chlorinated solvents; acid/alkaline wastes; phosphorous; salts; and fuel.

Automobile salvage activities at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over salvage yard and storage areas, picking up pollutants associated with the Facility’s industrial activity. The stormwater associated with industrial activity is then conveyed by the operation of gravity via site grading, sloped surfaces, ditches, subsurface hydrological connections, and other collections and conveyances into waters of the United States.²⁸

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.²⁹ The Operators discharge stormwater associated with their industrial activities, as defined by 40 C.F.R. § 122.26(b)(14), via site grading, sloped surfaces, ditches, subsurface hydrological connections, and other collections and conveyances into waters of the United States. Because the Operators have not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, they are illegally discharging stormwater without a permit, in violation of 33 U.S.C. §§ 1311(a) and

²⁷ See MSGP, Appendix D: Activities Covered, at D-4. Automobile salvage yard facilities identified by the SIC Code 5015 and scrap metal recycling facilities identified by SIC Code 5093 are subject to the requirements of the MSGP for stormwater discharges.

²⁸ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

²⁹ 33 U.S.C. § 1311(a).

1342(p)(2)(B).³⁰ By failing to apply for and comply with the specific requirements of the MSGP, the Operators are in violation of 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

a. The Operators are discharging stormwater to waters of the United States without a permit.

The Operators are industrial dischargers with SIC Codes of 5015 and 5093, which means that pursuant to Section 402(p) of the Clean Water Act, the Operators are obligated to apply for coverage under the MSGP or obtain other legal authorization. Because the Operators have operated and continue to operate without permits under Section 402(p), the Operators are in violation of Section 301(a) of the Act.

In addition, during storm events, the Facility's industrial activities have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) on each and every day that there has been a measurable precipitation event of above 0.1 inches. There have been many such storm events since 2007. The Facility is generating and conveying pollutants from at least the following point sources: piles of industrial materials; areas of industrial activity; vehicles, vehicle hulks, and equipment left outdoors; the vehicles driving on and off the Facility; sloped surfaces, channels, ditches, discrete fissures, subsurface hydrological connections, containers, and other conveyances to the Saugus River and downstream receiving waters.³¹ The Saugus River and its tributaries and associated wetlands, as well as downstream receiving waters including Pines River and the Lynn Harbors, are "waters of the United States," as defined in 40 C.F.R. § 122.2, and therefore, "navigable waters," as defined in 33 U.S.C. § 1362(7). The Facility is discharging industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. The Operators are violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

The Operators are violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.³² The Operators have SIC Codes of 5093 and 5015, and the Facility must obtain coverage under the MSGP for their stormwater discharges. The failure of the

³⁰ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source").

³¹ These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

³² MSGP part 1.1 and 1.2.

Operators to obtain coverage and comply with the permit is in violation of the MSGP and 33 U.S.C. § 1342(p) of the Clean Water Act.³³

1) The Operators Must Develop and Implement Stormwater Pollution Prevention Plans (SWPPPs).

As a prerequisite to obtaining coverage under the MSGP, the Operators must both prepare Stormwater Pollution Prevention Plans ("SWPPP").³⁴ Each SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.³⁵ The Operators have failed to develop SWPPPs in accordance with the MSGP requirements, in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

2) The Operators Must Submit to EPA Complete Notices of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, the Operators must submit a completed Notice of Intent ("NOI") to the EPA.³⁶ To complete the NOIs, the Operators are required to determine whether the body of water the stormwater is discharged to is an "impaired" water body, and whether the Facility discharges any of the pollutants for which the waterbody is impaired to that water body.³⁷ The Saugus River is classified as "impaired" water.³⁸ Because the Operators are "New Dischargers" under the MSGP,³⁹ they must also provide data and other technical information to EPA to discharge to impaired waters,⁴⁰ as well as implement and maintain any control measures or conditions to meet applicable water quality standards.⁴¹ Additionally, as part of preparing the NOIs, the Facility must make certain verifications such as verifying that no

³³ A thorough search of EPA's Electronic Stormwater Notice of Intent database reveals that The Operators have not filed an NOI for their Facilities. EPA's Electronic Stormwater Notice of Intent database, <http://cfpub.epa.gov/npdes/stormwater/noi/noisearch.cfm> (last visited September 22, 2014).

³⁴ See MSGP part 5.

³⁵ See MSGP part 5.1.

³⁶ See MSGP part 1.3.1.

³⁷ See MSGP part 2.2.2.

³⁸ See *supra* pp. 2–3.

³⁹ See MSGP, Appendix A: Definitions, Abbreviations, and Acronyms, at A-4 (defining the term "new discharger" as "a facility from which there is a discharge, that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a finally effective NPDES permit for discharges at that site"); see also 40 C.F.R. § 122.2.

⁴⁰ See MSGP part 1.1.4.7.

⁴¹ See MSGP part 2.2.2.3.

harm is done to a species in violation of the Endangered Species Act.⁴² The Operators have failed to prepare and file NOIs meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

3) The Operators Must Implement Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, the Operators must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. The Operators must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.⁴³ These control practices must be in accordance with good engineering practices and manufacturer's specifications.⁴⁴ If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.⁴⁵ The Operators have failed to cover the materials and operations that may result in polluted stormwater runoff. The Operators have not implemented the required control measures, in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

4) The Operators Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, the Operators must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.⁴⁶ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.⁴⁷ These inspections must occur when the Facility is in operation.⁴⁸ The schedule of these inspections must be included in the Facility's SWPPP and be performed by qualified personnel.⁴⁹ The Operators have failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

5) The Operators Must Comply with the Required Monitoring and Sampling Procedures.

⁴² See MSGP part 1.1.4.5 and 2.3.

⁴³ See MSGP part 2.1.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See MSGP part 4.1.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

To be eligible to discharge under the MSGP, the Operators must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.⁵⁰ The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.⁵¹ An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.⁵² Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.⁵³ All monitoring data collected under the Permit must be reported to EPA. Furthermore, because Saugus River is an “impaired water” under 33 U.S.C. § 1313(d), the Operators must monitor for all pollutants for which Saugus River is impaired.⁵⁴ The Operators have failed to conduct the required monitoring under the MSGP and have failed to submit the required monitoring reports to EPA in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

6) The Operators Must Carry out the Required Reporting and Recordkeeping.

The Operators must maintain and submit any and all required monitoring data.⁵⁵ Such monitoring data includes the following: an annual report to EPA which includes each Facility’s findings from the annual comprehensive site inspection and any documentation of correction actions;⁵⁶ an Exceedance Report to the EPA if any of the follow-up monitoring shows any exceedances of a numeric effluent limit;⁵⁷ and any other required reports under the MSGP.⁵⁸ The Operators have failed to maintain the required records and failed to submit all required monitoring data under the MSGP, in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

7) The Operators Must Comply with the Requirements of MSGP Subpart M.

The Operators must also comply with the sector-specific requirements contained in Subpart M of the MSGP.⁵⁹ Subpart M requires automobile salvage yard facilities to implement additional

⁵⁰ See MSGP part 6.

⁵¹ See MSGP part 6.2.

⁵² See MSGP part 6.1.1.

⁵³ See MSGP part 6.1.3.

⁵⁴ See MSGP part 6.2.4.

⁵⁵ See MSGP part 7.1

⁵⁶ See MSGP part 7.2.

⁵⁷ See MSGP part 7.3.

⁵⁸ See MSGP part 7.4.

⁵⁹ See MSGP, Appendix D, Table D-1, Sector M.

technology-based effluent limits,⁶⁰ meet additional SWPPP and inspection requirements,⁶¹ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to automobile salvage yard facilities.⁶² The Operators have failed to comply with the requirements of Subpart M of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

8) The Operators Must Comply with the Requirement of MSGP Subpart N.

The Operators must comply with the sector-specific requirements contained in Subpart N of the MSGP.⁶³ Subpart N requires scrap recycling and waste recycling facilities to implement additional technology-based effluent limits,⁶⁴ meet additional SWPPP and inspection requirements,⁶⁵ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to metal recycling facilities.⁶⁶ The Operators must also minimize contact of stormwater runoff with stockpiled materials, processed materials and non-recyclable wastes through various control measures such as permanent or semi-permanent covers, oil and water separators, sumps and dry absorbents for areas where potential sources of residual fluids are stockpiled.⁶⁷ The Operators have failed to comply with the requirements of Subpart N of the MSGP in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which the Operators operate the Facility without permit coverage or discharge stormwater from the Facility without a permit is a separate and distinct violation of Section 301(a) and 402(p)(2)(B) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

The Operators have discharged stormwater without a permit in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), on every day since at least 2007 on which there has been a measurable precipitation event. Every day, since at least 2007, on which the Operators have failed and continue to fail to apply for, obtain coverage under, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the Clean Water Act, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

⁶⁰ See MSGP part 8.M.2.

⁶¹ See MSGP part 8.M.3 and 8.M.4.

⁶² See MSGP 8.M.5.

⁶³ See MSGP, Appendix D, Table D-1, Sector N.

⁶⁴ See MSGP part 8.N.3.

⁶⁵ See MSGP part 8.N.4 and 8.N.5.

⁶⁶ See MSGP 8.N.6.

⁶⁷ See MSGP part 8.N.3.1.2.



These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

The Operators are liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects The Operators to a penalty up to \$32,500 per day for each violation at the Facility which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation at the Facility that occurred after January 12, 2009.⁶⁸ CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring The Operators to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

⁶⁸ 40 C.F.R. § 19.2

Sincerely,



Zachary K. Griefen, Esq.
Conservation Law Foundation
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4011
zgriefen@clf.org

cc: Gina McCarthy
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

H. Curtis Spalding
Environmental Protection Agency
EPA Region 1 Administrator
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Kenneth L. Kimmell, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108